



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Black Diamond Energies, Inc.

**File:** B-241370

**Date:** February 5, 1991

D.M. Carpenter for the protester.  
J.R. Holcombe, Jr., Department of Agriculture, Soil  
Conservation Service, for the agency.  
Sabina K. Cooper, Esq., and Christine S. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Withdrawal of a bid containing a discrepancy between a unit price and an extended price is not required where the bid would remain low regardless of how the discrepancy is resolved.
2. Discrepancy between a unit price and an extended price in a bid may be corrected to reflect higher unit price where it is clear from the face of the bid that there is only one reasonable interpretation of the discrepancy in light of the government estimate, the range of the other bids, or the contracting officer's logic or experience.

### DECISION

Black Diamond Energies, Inc. (BDE) protests the award of a contract to any other bidder under invitation for bids (IFB) No. SCS-8-MD-90, issued by the Department of Agriculture, Soil Conservation Service (SCS), for reclamation of a rural abandoned mine project in Garrett County, Maryland. BDE argues that the SCS determination not to allow correction of an error in the unit price for one item of BDE's bid was erroneous.

We sustain the protest.

The solicitation, issued on June 25, 1990, called for the pricing of six items, one of which, rock riprap, required a unit price and an extended price for a quantity of 325 tons. Four bids were received by the July 31 bid opening and BDE was

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the apparent low bidder at \$488,497. Unit prices for all bids were read at the bid opening by the contracting officer. BDE bid \$10.75 per ton for item No. 5, rock riprap. BDE's extended total for the item was \$9,820. After the unit prices were read, the representative from BDE informed the contracting officer that BDE's unit price was for the rock delivered, but that the extended price was for the rock installed. The representative also stated that he had never bid a government contract before and did not understand the bidding procedures.

On August 1, SCS corrected BDE's bid on item No. 5 to \$3,493.75, extending the unit price of rock riprap of \$10.75 a ton for 325 tons, resulting in a total bid price of \$482,170.75. By letter of August 2, SCS informed BDE that three of its bid items were substantially below the government's cost estimate: No. 3, removal of water, \$6,200 (government estimate - \$10,000); No. 5, rock riprap, \$3,493.75 (government estimate - \$14,625); and No. 6, seeding, \$49,020 (government estimate - \$91,250). SCS also informed BDE that an error was apparent in item No. 5, rock riprap; that the correct mathematical extension of that item was \$3,493.75; and that the correct total bid was \$482,170.75. SCS requested that BDE either verify its low bid in the amount of \$482,170.75 or claim that an error exists. The letter further stated that BDE must advise the agency of where the error lies and provide clear and convincing evidence to support the allegation of error, if error is claimed.

By letter of August 8, BDE asserted that an error did exist in item No. 5, rock riprap. BDE stated that the error was in the unit price, which was for rock delivered, rather than the extended price, which was for rock installed, and that the unit price of \$10.75 per ton should have been \$30.21 per ton (\$9,820 divided by 325 tons). BDE attached its original worksheet showing the rock riprap price calculation. BDE verified the other two bid items in question as correct. BDE did not assert that an error existed in its original overall bid price.

On August 28, SCS informed BDE that the agency was proceeding with pre-award activity while the SCS National Office was reviewing BDE's request to change its unit price for rock riprap. The letter requested that BDE acknowledge that the firm would accept award in the amount of \$482,170.75 in the event that modification of its bid price to \$488,497.00 was disallowed. BDE acknowledged that it would accept award at either amount on August 31.

However, on September 18, SCS decided not to allow BDE to correct its bid, after concluding that the firm's intended bid could not be independently verified by documents or other evidence outside of BDE's control, such as a supplier's quotation or verification of the cost of installation of the rock riprap. SCS reached this conclusion despite the fact that the contracting officer had determined, after consultation with the State Conservation Engineer for SCS, that a unit price of \$30.21, rather than \$10.75, was reasonable for rock riprap installed. SCS then informed BDE by letter of September 19 that correction would not be allowed, but that BDE would be permitted to withdraw its bid. BDE filed a bid protest in our Office on September 28, including with its protest a supplier's quotation dated July 10 for 325 tons of rock riprap at \$10.75 per ton.

The mistake in bid rules, permitting relief for certain mistakes made in the calculation and submission of bids, are premised on two principles: that it would be unfair for the government to take advantage of what it knows or should know is an error by the bidder, and that the government should not automatically be deprived of an advantageous offer solely because the bidder made a mistake. Duro Paper Bag Mfg. Co., 65 Comp. Gen. 186 (1986), 86-1 CPD ¶ 6. Because mistake in bid situations arise in the period after bid opening, however, when bid prices have been exposed and market conditions may have changed, the rules also reflect a paramount concern with protecting the integrity of the competitive bidding system. Id.

The Federal Acquisition Regulation (FAR) provides at § 14.406 that, in cases where the contracting officer has reason to believe that a mistake may have been made after bid opening and before award, he or she shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with the procedures provided for apparent clerical mistakes or other mistakes disclosed before award. In the case of a clerical mistake apparent on the face of the bid, the contracting officer may correct the mistake; however, the contracting officer must first obtain from the bidder a verification of the bid intended. FAR § 14.406-2. In other cases, if a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and what the bidder actually intended, the agency may permit the correction if the bid would remain low. FAR § 14.406-3.

Here, the discrepancy between the unit prices and extended prices for rock riprap in BDE's bid, and the fact that three of BDE's bid items were substantially below the government estimate, properly led the contracting officer to request that BDE verify its bid. See FAR §§ 14.406-2(b), 14.406-3(g)(1). In its letter, SCS requested that BDE verify its bid price as corrected by the contracting officer for the alleged clerical extension error to \$482,170.75. When BDE responded, it verified its original bid price of \$488,927, noting that its error had been in recording the unit price of rock riprap as delivered, rather than the unit price of rock riprap as installed, and supplying its worksheet showing how it calculated its price for rock installed (by multiplying the price of the rock delivered by the number of labor hours). BDE did not claim an error in its extended price for rock riprap.

While a contracting officer must reject a mistaken bid if it is not clear that the bid would have remained low absent the mistake, Prince Constr. Co., 63 Comp. Gen. 200 (1984), 84-1 CPD ¶ 159, where the bid would be low either way, rejection or withdrawal of the bid is not required. National Heat and Power Corp., B-212923, Jan. 27, 1984, 84-1 CPD ¶ 125. Since BDE remains the low bidder under either its original bid price or the price as initially corrected by the contracting officer, there is no basis to require withdrawal of its bid.

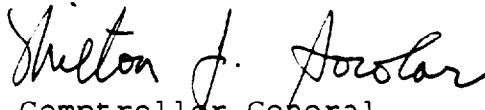
With regard to correction of the bid, we find that the unit price may be increased to conform to the extended price. The contracting officer concluded that correction of the unit price should be allowed; the agency's reviewing official, however, concluded that the evidence in support of the mistake was not sufficient to permit correction, noting in part that the "purportedly intended bid cannot be verified independently by documents or other evidence outside of BDE's control." Contrary to the reviewing official's suggestion, however, where, as here, correction will not result in displacing a lower bid, it is proper to refer to extrinsic evidence to determine whether there is clear and convincing evidence of the existence of the mistake and the bid actually intended. See FAR § 14.406-3; Raymond L. Crawford Construction Co., B-211516, Aug. 23, 1983, 83-2 CPD ¶ 239.

We agree with the contracting officer that there is clear and convincing evidence that the corrected unit price was the intended bid. The protester submitted a worksheet showing its calculation of its extended price for the rock riprap and a supplier's quotation verifying that its \$10.75 unit price was for rock riprap delivered rather than installed. In addition, the unit price as corrected (\$30.21) is more in line with the government estimate (\$45) and the other bids (\$20, \$35, \$38.21) than is the original unit price (\$10.75). The

contracting officer also consulted an engineer who confirmed that BDE's asserted prices for rock riprap delivered as compared to installed were reasonable. Under these circumstances, we conclude that there is clear and convincing evidence that the extended price was the intended bid.

Given our conclusion that the protester should not be required to withdraw its bid and that the unit price may be corrected to reflect the intended higher price, we recommend that the agency make award to the protester at its original bid price of \$488,947, provided that BDE is found to be a responsible firm. We also find that BDE is entitled to the costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d) (1) (1990).

The protest is sustained.

*for*   
Comptroller General  
of the United States